

CO Colorado Regulations  
June 27, 2006

1 CCR 104-1 Procedural Rules

GENERAL SUPPORT SERVICES (Colorado Department of Personnel) DIVISION OF  
ADMINISTRATIVE HEARINGS

RULES

Rule 1. Scope of Rules.

A. These rules apply to the conduct of all cases before the Division of Administrative Hearings, Colorado Department of Personnel, whether contested or not, except the following matters:

1. Cases before the Colorado Department of Human Services, the Colorado Department of Health Care Policy and Financing, or any County Department of Social Services pertaining to appeals by applicants for or recipients of public assistance and/or food stamps and to intentional program violation proceedings.
2. Juvenile and adult parole proceedings.
3. Disputes concerning workers' compensation.

B. When a statute, rule or regulation of any agency on whose behalf a hearing is being conducted by an administrative law judge is in conflict with or inconsistent with these rules, the statute, rule or regulation of the agency shall take precedence.

C. Notwithstanding the above provisions, Rule 6 of these Rules of Procedure applies to all cases heard by any administrative law judge in the Division of Administrative Hearings.

Rule 2. Definitions and Rules of Construction.

A. As used in these rules, the following words have the following meanings:

1. "Agency" means any board, bureau, commission, department, institution, division, section or officer of the State of Colorado.
2. "Division" means the Division of Administrative Hearings, created in the Colorado Department of Personnel by Section 24-30-1001(1), C.R.S. (1996).
3. "Administrative Law Judge" means an administrative law judge appointed pursuant to Section 24-30-1003, C.R.S. (1996).

B. As used in these rules the following rules of construction shall apply unless the context otherwise requires:

1. Words in the singular shall include the plural and words in the plural shall include the singular.
2. These rules shall be liberally construed to secure the just, speedy and inexpensive determination of all matters presented to the Division.

3. Appendices to these rules are considered to be part of these rules.

#### Rule 3. Referral and Assignment of Cases.

Where an agency is given statutory authority to appoint an administrative law judge, to have its hearings conducted by an administrative law judge or in any way to refer a matter to an administrative law judge, the agency's action, or a party's action pursuant to statute or regulation, in filing pleadings with the Division and/or in requesting a setting of any hearing dates by the Division will be considered to constitute the appointment of or referral to an administrative law judge. Administrative law judges will be assigned to cases by the Director of the Division or by the designee of the Director.

#### Rule 4. Setting of Hearings or Other Proceedings.

When a hearing before the Division is requested by any party, it shall be the responsibility of the agency or its counsel promptly to file and serve a notice to set a hearing on the merits, unless otherwise ordered by the administrative law judge. Setting of hearings or other proceedings will be made by the Division at 9:00 a.m. on the second and fourth Fridays of each month, or at such other times specifically ordered by the Division. When a statute or rule requires a more expedited setting, or at the discretion of the administrative law judge, the hearing on the merits may be set at any time. A notice to set any proceeding must be filed with the Division and served upon all persons entitled to notice of the setting at least 5 days prior to the date of the setting. For the purpose of setting any matter, a party or a party's representative may appear at the Division's office at the time established for the setting or may telephone the Division at such time. Hearing dates will be set whether or not the parties participate at the setting. A prompt hearing on the merits will be set within 90 days from the setting date. Prior to the date of the setting conference, any party may make a written request that an administrative law judge be available at the setting to consider an oral or written request to hold the hearing more than 90 days from the setting date. In no case will the hearing be set more than 180 days from the setting date.

#### Rule 5. Entry of Appearance and Withdrawal of Counsel.

A. No attorney shall appear in any matter before the Division until an appearance has been entered by filing an Entry of Appearance or signing a pleading. An Entry of Appearance shall state the identity of the party for whom the appearance is made, the attorney's office address and telephone number and the attorney's registration number. Nothing contained herein shall preclude an out of state attorney from being admitted in accordance with C.R.C.P. 221.1.

B. An attorney may withdraw from a case only upon order of the administrative law judge. Approval to withdraw shall not be granted until the attorney seeking to withdraw has made reasonable efforts to give actual notice to the client that:

1. the attorney wishes to withdraw;
2. the client has the burden of keeping the administrative law judge informed of the address where notices, pleadings, or other papers may be served;
3. the client has the obligation to prepare for hearing or to hire other counsel to prepare for hearing;

4. if the client fails or refuses to meet these burdens, the client may suffer an adverse determination in the hearing;

5. the holding of further proceedings will not be affected by the withdrawal of counsel. The notice shall set forth the dates set for any further proceedings;

6. pleadings and papers in the case may be served upon the client at the client's last known address; and

7. the client has the right to object within 15 days of the date of notice. The above notification must be in writing and filed with the administrative law judge along with a statement showing the manner in which such notification was given to the client and setting forth the client's last known address and telephone number.

C. The client and opposing counsel shall have 15 days from the date of the notice to object to a withdrawal. After withdrawal the client shall be notified by the withdrawing attorney of the effective date of the withdrawal, and all pleadings, notices or other papers may be served on the party directly by mail at the last known address of the party until new counsel enters an appearance.

#### Rule 6. Expanded Media Coverage.

Expanded media coverage of cases before the Division may be permitted at the discretion of the administrative law judge, under such conditions as the administrative law judge may designate. In determining whether expanded media coverage should be permitted, the administrative law judge shall consider the following factors:

A. Whether there is a reasonable likelihood that expanded media coverage would interfere with the rights of the parties to a fair hearing;

B. Whether there is a reasonable likelihood that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the proceedings;

C. Whether expanded media coverage would create adverse effects that would be greater than those caused by traditional media coverage.

#### Rule 7. Consolidation.

A party seeking consolidation of two or more cases shall file a motion to consolidate in each case sought to be consolidated. If more than one administrative law judge has been assigned to the cases sought to be consolidated, the motion shall be determined by the administrative law judge assigned to the case first filed. If consolidation is ordered, all subsequent filings shall be in the case first filed and all previous filings related to the consolidated cases shall be placed together under that case number. Consolidation may be ordered on an administrative law judge's own motion.

#### Rule 8. Discovery.

A. To the extent practicable, C.R.C.P. 26 through 37 apply to proceedings within the scope of these rules, except to the extent that they provide for or relate to disclosures, numerical limitations on discovery requests, or the time when discovery can be initiated. Discovery may be conducted by any party without authorization of the administrative law judge.

B. C.R.C.P. 16 does not apply to proceedings before the Division.

C. In addition to the requirements of C.R.C.P. 36, a request for admission shall explicitly advise the party from whom an admission is requested that failure to respond to the request within 30 days after service may result in all of the matters stated in the request being deemed established for the purpose of the hearing. The request for admission shall further state that if the party to whom the request is directed fails to appear at the hearing, any controverted factual matter may be resolved adversely to that party on the basis of such admission. The failure to comply with this rule may result in the matters contained in the request being deemed denied.

Rule 9. [NO RULE].

Rule 10. Determination of Motions.

A. Any motions, except those made during hearing or when the administrative law judge deems an oral motion to be appropriate, involving a contested issue of law shall be supported by a recitation of legal authority either incorporated into the motion or set forth in a separate memorandum brief. If the moving party chooses to submit a brief rather than incorporate the recitation of legal authority into the motion, the brief shall be filed with the motion, except for motions under C.R.C.P. 12, for which motions an additional 10 days to file a separate brief will be allowed. A responding party shall have 10 days or such lesser or greater time as the administrative law judge may allow in which to file and serve a responsive brief. Reply briefs will be permitted only upon order of the administrative law judge. If so ordered, the reply brief must be filed within 5 days of the order of the administrative law judge.

B. If a party files a motion which does not involve a contested issue of law, the opposing party will have 10 days, or such lesser or greater time as the administrative law judge allows, in which to file a response. The moving party will not be permitted to file a reply unless ordered by the administrative law judge. If so ordered, the reply must be filed within 5 days of the order of the administrative law judge.

C. If facts not appearing of record before the administrative law judge may be considered in disposition of the motion, the parties may file affidavits at the time of filing the motion or responsive or reply brief. Copies of such affidavits and any documentary evidence used in connection with the motion shall be served on all other parties.

D. If the moving party fails to incorporate legal authority into the motion and fails to file a separate brief with the motion, the administrative law judge may deem the motion abandoned and may enter an order denying the motion. Failure of the responding party to file a responsive brief may be considered a confession of the motion.

E. If possible, motions will be determined upon the written motion and briefs submitted. The administrative law judge may order oral argument or evidentiary hearing on the administrative law judge's own motion or on request of a party, in which event all parties will be notified of such order. If any party fails to appear at an oral argument or hearing without prior showing of good cause for non-appearance, the administrative law judge may proceed to hear and rule on the motion.

F. An expedited hearing on any motion may be held at the instance of the administrative law judge. If any party requests that a motion be determined immediately with or without a hearing, or that a hearing be held on a motion in advance of a previously set motions date, that party shall:

1. Inform the administrative law judge of said request.
2. Contact all other parties, determine their position on the motion, and indicate on the face of the motion whether other parties oppose the motion and whether they will request a hearing on the motion.
3. If a hearing is desired by any party and authorized by the administrative law judge the moving party, upon advance notice to the administrative law judge or the docket clerk, shall notice in all other parties to set the matter directly with the administrative law judge on an expedited basis.

G. Any defense enumerated in C.R.C.P. 12 may be made by motion. All such motions shall be filed within 10 days after the answer required by the Administrative Procedure Act. Any such motion not filed within the time limits established by this section or by the administrative law judge, except motions asserting a lack of jurisdiction over the subject matter, shall be waived.

#### Rule 11. Place of Hearing.

Except as excluded below, all cases within the scope of these rules will be heard at the Division of Administrative Hearings in Denver. The parties may agree to a different location, and so advise the setting clerk at the time of the setting conference. On the motion of a party or the administrative law judge made subsequent to the setting conference, the administrative law judge for good cause shown may change the place of hearing, when the convenience of witnesses and parties and the ends of justice will be promoted by the change. This rule does not apply to Department of Human Services cases.

#### Rule 12. Settlement or Mediation Conferences.

At any time after a proceeding is initiated, any party may file with the administrative law judge and serve upon all other parties a request for a settlement or mediation conference. If the request is granted, the conference shall be conducted by any available administrative law judge other than the assigned administrative law judge. All of the discussions at the settlement or mediation conference shall remain confidential and shall not be disclosed to the administrative law judge assigned to the case. Statements at the settlement or mediation conference shall not be admissible evidence for any purpose in any other proceeding. An administrative law judge may require a settlement or mediation conference on the administrative law judge's own motion.

#### Rule 13. Prehearing Procedure and Prehearing Conference.

A. C.R.C.P. 16 does not apply to proceedings before the Division.

B. Whether a formal prehearing conference is held shall be discretionary with the administrative law judge.

C. Unless otherwise ordered by the administrative law judge, in cases in which no prehearing conference is held, each party shall file with the administrative law judge and serve on each other party a prehearing statement in substantial compliance with the form as outlined in Appendix A to these rules. Prehearing

statements shall be filed and served no later than 20 days prior to the date set for hearing or such other date established by the administrative law judge. Exhibits shall not be filed with prehearing statements, unless ordered by the administrative law judge. Exhibits shall be exchanged between the parties by the date on which prehearing statements are to be filed and served or on such other date as ordered by the administrative law judge.

1. The authenticity of exhibits, statutes, ordinances, regulations or standards set forth in the prehearing statement shall be admitted unless objected to in a written objection filed with the administrative law judge and served on other parties no later than 10 days prior to hearing.

2. The information provided in a prehearing statement shall be binding on each party throughout the course of the hearing unless modified to prevent manifest injustice. New witnesses or exhibits may be added only if the need to do so was not reasonably foreseeable at the time of filing of the prehearing statement and then only if it would not prejudice other parties or necessitate a delay of the hearing.

D. Prehearing conferences may be held at the discretion of the administrative law judge, upon request by any party or upon the administrative law judge's own motion. If any party deems a prehearing conference advisable, that party shall call such advisability to the attention of the administrative law judge.

1. Unless otherwise ordered by the administrative law judge, no later than 10 days before the date set for prehearing conference, the parties shall:

a. Complete such discovery as is necessary for hearing of the matter.

b. Discuss the prospects of settlement and be prepared to report thereon at the prehearing conference.

c. Prepare a prehearing statement in substantial compliance with the form set forth in Appendix A to these rules, file it with the administrative law judge and serve it on all other parties.

d. Be prepared to consider any matters that will simplify the issues and aid in the disposition of the controversy.

e. To the extent practicable, premark and exchange copies or photographs of all exhibits intended to be offered into evidence at the hearing on the merits, respondents using letters and all other parties using numbers.

f. Confer concerning what matters of fact and law can be stipulated.

g. To the extent practicable, file and be prepared to argue or respond to motions in limine, motions concerning any outstanding discovery issues and motions concerning any other matters which can be considered in advance of hearing.

2. After a prehearing conference is held, the administrative law judge may enter an order which fully recites the action taken at the conference, including amendments allowed to pleadings, admissions, stipulations or agreements of the parties and rulings on admissibility of evidence. Such order shall control the subsequent course of the hearing unless modified at the hearing to prevent manifest injustice. The form of the prehearing order may be abbreviated by

incorporation by reference of all or portions of the parties' prehearing statements.

E. Compliance with Rule 13 is mandatory, unless otherwise ordered by the administrative law judge. If a prehearing conference is held and a prehearing order is entered, the prehearing order will control the course of the hearing. In the event of noncompliance with this rule, the administrative law judge may impose appropriate sanctions.

#### Rule 14. Rules of Evidence.

To the extent practicable the Colorado Rules of Evidence applicable in civil cases apply in all hearings conducted by the Division. Unless the context requires otherwise, whenever the word "court", "judge" or "jury" appears in the Colorado Rules of Evidence such word shall be construed to mean an administrative law judge. An administrative law judge has the discretion to admit evidence not admissible under such rules, as permitted by law.

#### Rule 15. Rules of Civil Procedure.

To the extent practicable, and unless inconsistent with these rules, the Colorado Rules of Civil Procedure apply to matters before the Division. C.R.C.P. 16, however, does not apply. Unless the context otherwise requires, whenever the word "court" appears in a rule of civil procedure, that word shall be construed to mean an administrative law judge.

#### Rule 16. Files and Hearings Open to the Public.

All files shall be open to public inspection, unless otherwise prohibited by law, regulation or court order, or when upon motion and order the agency or administrative law judge otherwise has the authority or discretion to prohibit public inspection. All hearings shall be open to the public unless prohibited by law, regulation or court order or closed by order of the administrative law judge or the agency.

#### Rule 17. Motions for Continuance.

A. Continuances are discouraged and shall be granted only upon a showing of good cause. Motions for continuance must be filed in a timely manner. Stipulations for a continuance shall not be effective unless and until approved by the administrative law judge.

B. Good cause may include but is not limited to: death or incapacitation of a party or an attorney for a party; a court order staying proceedings or otherwise necessitating a continuance; entry or substitution of an attorney for a party a reasonable time prior to the hearing, if the entry or substitution reasonably requires a postponement of the hearing; a change in the parties or pleadings sufficiently significant to require a postponement; a showing that more time is clearly necessary to complete authorized discovery or other mandatory preparation for the hearing; or agreement of the parties to a settlement of the case which has been or will likely be approved by the final decision maker.

C. Good cause normally will not include the following: unavailability of counsel because of engagement in another judicial or administrative proceeding, unless the other proceeding was involuntarily set subsequent to the setting in the present case; unavailability of a necessary witness, if the witness' testimony

can be taken by telephone or by deposition; or failure of an attorney timely to prepare for the hearing.

Rule 18. Subpoenas.

Upon oral or written request of any party or of counsel for any party, an administrative law judge shall sign a subpoena or subpoena duces tecum requiring the attendance of a witness or the production of documentary evidence, or both, at a deposition or hearing. Unless otherwise provided by agency statute, rule or regulation, practice before the Division regarding subpoenas shall be governed by C.R.C.P. 45.

Rule 19. Settlements.

The administrative law judge shall be notified promptly of all settlements, stipulations, agency orders or any other action terminating a matter before the Division. A copy of such settlement, stipulation, agency order or of any other document reflecting an action terminating a matter before the Division shall be filed with the Division.

Rule 20. Ex Parte Communications.

With the exception of scheduling or other purely administrative matters, a party or counsel for a party shall not initiate any oral communication with an administrative law judge pertaining to a matter before the Division unless prior consent of all other parties or their counsel has been obtained. Copies of all pleadings or correspondence filed with the Division or directed to an administrative law judge by any party shall be served upon all other parties or their counsel.

Rule 21. Procedure in Summary Suspension Matters.

A. All deadlines and procedures set forth herein or in the Colorado Rules of Civil Procedure may be modified as necessary to afford a licensee the right to a prompt hearing.

B. Unless otherwise ordered by the administrative law judge, in all matters involving a summary suspension, the Attorney General's office shall serve a Notice to Set an Informal Prehearing Conference at the same time that the Notice of Charges or other charging document is served. The setting date for the informal prehearing conference shall be as soon as possible (allowing adequate notice to respondent) and need not be scheduled on the Division's normally scheduled setting dates, as long as the date and time are cleared in advance with the Division's docketing clerk. If written notice to set the informal prehearing conference is waived by the licensee, the informal prehearing conference shall be set by telephone conference upon agreement of the administrative law judge.

C. The purpose of the informal prehearing conference in summary suspension cases shall be to set the case for hearing on the merits and arrange for expedited discovery schedules, motion dates, and prehearing conferences as necessary.

D. Following the informal prehearing conference, the administrative law judge shall issue an order setting forth the special deadlines and schedules that will apply to that case.

Rule 22. Computation and Modification of Time.



In computing any period of time prescribed or allowed by these rules, the provisions of C.R.C.P. 6(a) and 6(e) shall apply. The time periods of these rules of the Division may be modified at the discretion of the administrative law judge.

Rule 23. Filing of Pleadings and Other Papers.

The originals of all pleadings and other papers filed in a case before the Division shall be filed with the administrative law judge. After the Division has assigned a case number to a matter, all pleadings filed with the Division shall contain that case number.

Rule 24. Filing of Pleadings and Other Papers by Facsimile Copy.

A. The facsimile capabilities of the Division are limited. Parties are encouraged to avoid filing pleadings by facsimile copy, except when reasonably required by time constraints.

B. Subject to the limitations of Rule 24(C), facsimile copies may be filed with an administrative law judge in lieu of the original document. If a facsimile copy is filed in lieu of the original document, the attorney or party filing the facsimile copy shall retain the original document for production to the administrative law judge, if requested.

C. Pleadings or other documents in excess of ten pages (excluding the cover sheet) may not be filed by facsimile copy in lieu of the original document unless otherwise ordered by the administrative law judge.

D. Facsimile copies shall be accompanied by a cover sheet which states the title of the document, case number, number of pages, identity and voice telephone number of the transmitter and any instructions.

E. Facsimile copies received by the Division after 5:00 p.m. will be considered to have been filed on the next business day.

Rule 25. Service of Pleadings and Other Papers.

Service of pleadings or other papers on a party or on an attorney representing a party may be made by hand delivery, by mail to the address given in the pleadings, or to the party's last known address. When a party is represented by an attorney, service shall be made on the attorney.

Rule 26. Testimony by Telephone or Other Electronic Means.

A. Upon motion of any party the administrative law judge may conduct all or part of a hearing by telephone or videophone pursuant to C.R.C.P. 43(i)(1), except that said motion need only be filed sufficiently prior to hearing to permit a response and ruling pursuant to Division Rule 10.

B. All arrangements for the taking of testimony by telephone or videophone shall be made by the party requesting such testimony, who shall be responsible for all costs associated with the testimony.